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ABSTRACT

This report presents information on compulsory education. Data were collected through a review of literature, a telephone survey of state Department of Education personnel, and interviews with South Dakota state Department of Education personnel. The document reviews trends in legislation pertaining to compulsory education in the United States and identifies state efforts to improve school attendance. South Dakota, for example, raised the allowable exit age from 14 to 16 years of age in 1990. The action appears to have reduced the number of youths on the streets and made educators more aware of the many ways in which students learn. However, there has been an increase in the number of uninterested students and a lack of training and resources for teachers to meet the needs of those students. It is recommended that legislators amend the current compulsory attendance law in Nebraska by raising the upper age limit from 16 to 18, or high school graduation. However, a provision to the amendment would allow a person 16 years or older to be excused by school authorities if he or she has successfully completed a minimum competency test. Given the link between education and the juvenile justice system, the state legislature should commission a joint task force, comprised of representatives from both systems, to explore common issues and interests. Three tables are included. (LMI)

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COMPULSORY EDUCATION:

A POLICY ANALYSIS

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This report on compulsory education was prepared for the Nebraska Department of Education. The information presented is based on a literature review and interviews with state department of education personnel and school district employees. The report includes the following sections.

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COMPULSORY EDUCATION: A POLICY ANALYSIS

Compulsory Education/Attendance Laws

Introduction

This overview of American compulsory education/attendance laws is based on the resources of the University of Nebraska library system. There is a mass of pertinent primary legal material--constitutional provisions, statutory enactments, and judicial decisions. There is a much smaller body of secondary sources, and most of these publications tend to focus more on legal principles than on education policy considerations. In this paper, as in most publications, compulsory education and compulsory attendance will be treated as synonymous.

For those interested in general overviews of compulsory attendance laws, three good sources are: 88 American Jurisprudence 2d. (1993), "Schools" secs. 228-239; 79 Corpur Juris Secundum 2d. (1952 & 1993), "Schools and School Districts" secs. 463-473; and 1 Education Law, Public and Private (Valente, 1985), secs. 5.2-5.3. Two books that focus specifically on compulsory attendance laws are Legal Foundations of Compulsory School Attendance (Kotin & Aikman, 1980) and Legal Aspects of Educational Choice: Compulsory Attendance and Student Assignment (Alexander & Jordan, 1973). A brief policy treatment of compulsory education can be found in Chapter 1 of Educational Policy and the Law 3d. (Yudof, Kirp, & Levin, 1992).

Overview

The place of compulsory attendance laws in American society is generally understood. "In every state American children are legally obligated to attend school or to receive some minimum level of instruction in the home" (Yudof, Kirp, & Levin, 1992,

p. 1). The authority of a state to promulgate and enforce compulsory attendance laws is well settled (Valente, 1985, p. 93).

A triad of interests undergird the public policy embodied in compulsory attendance laws (Alexander & Jordan, 1973). States have interests in the cultural, economic, and social development of their people. Children have interests in personal development, personal freedom, and protection from parental abuse and neglect. Parents have interests in controlling their children's behavior and destiny. Compulsory attendance laws are affirmative state actions that attempt to balance these interests (pp. 1-8).

Constitutional Considerations

The Constitution of the United States does not mention education, and the Supreme Court has held that education is not a fundamental constitutional right (San Antonio Independent School District v. Rodriguez, 1973). But the Court has clearly acknowledged the importance of education.

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. (Brown v. Board of Education of Topeka, 1954)

The Tenth Amendment to the Constitution provides that the powers not delegated to the United States by the Constitution, nor prohibited by it, are reserved to

the states. Thus, the responsibility for education is left to the individual states, and each state exercises much authority over all educational matters within its territorial jurisdiction. For example, the Constitution of the State of Nebraska, Art.VII, Sec. 1 provides that "[t]he Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years," and the Legislature has done so by its many enactments.

One form of such state legislation is represented by compulsory education statutes. The general power of a state to enact such legislation has never been successfully challenged, and three United States Supreme Court cases are often cited in support of the principle that most state regulation of education, including compulsory attendance laws, is constitutionally permissible.

Meyer v. Nebraska (1923) overturned the conviction of a teacher under a Nebraska statute that prohibited teaching German to a child who had not passed the eighth grade, holding that this enactment violated liberty interests protected by the Due Process Clause of the Fourteenth Amendment. The Court noted in its opinion that "[t]he power of the State to compel attendance at some school and to make reasonable regulations for all schools, . . . , id not questioned" (p. 402).

Pierce v. Society of Sisters (1925) struck down an Oregon compulsory education statute that required attendance at public school, holding that this enactment interfered unreasonably with both parental liberty interests and private school property rights and thus violated the Due Process Clause of the Fourteenth Amendment. The Court again noted in its opinion that no question had been "raised concerning the power of the State

to reasonably regulate all schools" and "to require that all children of proper age attend some school" (p. 534).

Meyer and Pierce, each decided on Fourteenth Amendment Due Process grounds, have come to stand for the proposition that parents have a constitutionally protected right to direct the education of their children. This right, however, is not absolute; reasonable state regulations pertaining to education, including compulsory attendance statutes, are constitutionally permissible. State v. DeLaBruere (1990); Johnson v. Charles City Community Schools Board (1985).

Wisconsin v. Yoder (1972) was a freedom of religion case. The Supreme Court held that the Free Exercise Clause of the First Amendment prevented Wisconsin from requiring Amish parents to send their children who had completed eighth grade to formal high school through age 16. The Amish contended that the additional years of schooling would interfere with their exercise of sincerely held religious beliefs, and the state was not able to carry its burden of justifying the interference with religious freedom that this additional schooling would entail. Again, the Court noted that "[t]here is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education" (p. 213) and that "[n]othing we hold is intended to undermine the general applicability of the State's compulsory school-attendance statute . . ." (p. 236).

Yoder articulated the "compelling interest" or "strict scrutiny" test that is often invoked by those alleging that some government action burdens their free exercise of religion.

> [A]gainst a claim that such [regulation] interferes with the practice of a legitimate religious beliefs, it may appear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause. (p. 214)

Taken together, Meyer, Pierce, and Yoder stand for the proposition that a state has authority to impose reasonable regulations pertaining to education, including compulsory attendance requirements. This authority, however, is limited by constitutional rights of parents, grounded in the Fourteenth Amendment and sometimes in the First Amendment, to exercise substantial control over the upbringing and education of their children.

The Nebraska Supreme Court struck the constitutional balance in State ex rel. Douglas v. Faith Baptist Church (1981), which upheld state education statutes and regulations against a First Amendment challenge.

> The cases we have cited . . . should leave no doubt as to the critical interest which the State has in the quality of the education provided its youth. Although parents have a right to send their children to schools other than public institutions, they do not have the right to be completely unfettered by reasonable government regulations as to the quality of the education furnished. (p. 817)

The differences in constitutional analyses applied by courts to resolve disputes that turn on a religious freedom issue and to those that do not is illustrated by two companion cases decided recently by the Michigan Supreme Court. In People v. DeJonge (1993) the issue was whether a state teacher certification requirement for home schools violated parental rights protected by the Free Exercise Clause of the First Amendment. The court held that it did. Challenges alleging violations of the Free Exercise Clause in conjunction with other constitutional protections, such as the right of

parents to direct the education of their children, invoke the application of strict judicial scrutiny. The parents were able to show that the regulation burdened a sincerely held religious belief, which put the burden on the state to show that the regulation was necessary to serve a compelling state interest. The state was not able to do so. In People v. Bennett (1993) the issue was whether a teacher certification requirement for home schools violated a parent's right to direct a child's education; no religious convictions were involved in this challenge. The court held that a parent's right to direct a child's education is not a fundamental constitutional right; therefore, the burden is on the parent challenging the requirement to show that it was unreasonable. The parents were unable to do so, and the requirement was upheld.

Federal Statutes

Congress recently passed the Religious Freedom Restoration Act, which was signed into law on November 16, 1993. The stated purpose of the Act is to "restore" the compelling interest test as articulated in Wisconsin v. Yoder (1972), which had been eroded by another Supreme Court decision, at least in its application to rules of general applicability in noneducational settings. The Act will have some impact on public school operations, and will probably be raised as a defense by those who believe that the imposition of compulsory education laws burdens their free exercise of religion. Section 3 of the Act provides as follows:

> (a) IN GENERAL. Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).
>
> (b) EXCEPTION. Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person--(1) is

in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.

A good discussion of the Act is provided in A Word On . . . (Fall 1993), published by the National School Boards Association.

State Statutes

Each state has statutes providing for compulsory education.

> Compulsory attendance laws among the states are strikingly similar in their overall pattern, despite some differences in detail. Uniformly, they refer to minimum and maximum ages, provide for permissive attendance beyond these limits, stipulate the term for school operation, impose the legal obligation concerning regular attendance, exempt certain groups from the requirements, and provide penalties for non compliance and procedures for enforcement. (Alexander & Jordan, 1973, pp. 12-13)

Nebraska's statutory provisions have fit this pattern. The first compulsory attendance law, which was enacted in 1887, is included here to provide historical perspective.

> Section 1. That it shall be unlawful for any parent or guardian living in the state of Nebraska to neglect or refuse to cause or compel any one person or persons who are or may be under their control as their children or wards to attend and comply with the rules of some one or more public or private school, or schools, for a term of twelve weeks or more during each successive year from the time said children or wards are eight years old until they are fourteen years old inclusive. Unless they may be prevented by illness, poverty, inability or by reason of already being proficient, from attending such public or private school or schools, and
>
> Provided, That in such cases they shall be excused by the board of education of the school district in which said children or wards may live at the time of such failure to attend such public or private school or schools.
>
> Sec. 2. That any person or persons violating this act shall be subject to a fine of not less than ten dollars nor more than fifty dollars for each and every offense. Said fine shall be imposed by any court of justice having jurisdiction on sufficient evidence of the same being furnished by two or more credible witnesses and all fines so called shall be placed in the general school fund the same as other fines and penalties.
>
> Approved March 31, 1887.

The current compulsory attendance statute, which was last amended in 1987, provides as follows:

> Compulsory education; attendance required; length of school term. Every person residing in a school district within the State of Nebraska who has legal or actual charge or control of any child not less than seven nor more than sixteen years of age shall cause such child to attend regularly the public, private, denominational, or parochial day schools which have met the requirements for legal operation prescribed in Chapter 79 each day that such schools are open and in session, except when excused by school authorities, unless such child has been graduated from high school. The term shall not be less than (1) one thousand thirty-two instructional hours for elementary grades and (2) one thousand eighty instructional hours for high school grades in any public school district or private, denominational, or parochial school, . . . (Neb. Rev. Stat. sec. 79-201).

Enforcement

The first level of enforcement is at the local school level. Nebraska boards of education for public schools may "devise such means as may seem best to secure the regular attendance and progress of children at school" (Neb. Rev. Stat. sec. 79-447). Boards of education of private or parochial schools have general authority to "have and exercise the general management of the school . . . " (Neb. Rev. Stat. sec 79-1704). Attendance officers shall be appointed by public boards to enforce the provisions of sec. 79-201 (Neb. Rev. Stat. sec. 79-201).

School officials have substantial authority in regard to compulsory attendance. The Nebraska supreme court held in In Re Interest of K.S. (1985) that the language in sec. 79-201 specifically providing that the compulsory attendance law is violated by a child who does not attend in accordance therewith "except when excused by school

authorities" means just that--only school authorities, not parents, have the power to excuse a child from attendance at school.

The second level of enforcement is external. States have power to sanction violations of compulsory attendance laws by prosecuting offending parents or by taking appropriate action against offending children (Valente, 1985, p. 93). Nebraska's statutory scheme is consistent with this general pattern.

Attendance officers shall do all in their power to compel the lawful attendance of any child unlawfully absent from school. Upon failure to accomplish this, and after having served written notice on the person in violation, the attendance officer shall file a report with the county attorney, who may then file a complaint against the person in county court. (Neb. Rev. Stat. sec. 79-211). Any person violating the provisions of section 79-201 shall be guilty of a Class III misdemeanor (Neb. Rev. Stat. sec. 79-216).

If action is taken against the truant child, Nebraska's juvenile code may be involved. (See In Re Interest of K.S., 1984). A juvenile court shall have exclusive original jurisdiction as to any juvenile "who, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who deports himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school" (Neb. Rev. Stat. sec 43-237(3)(b)).

Juveniles who come under the jurisdiction of a juvenile court pursuant to sec. 43-237(3)(b) are sometimes referred to as "status offenders" (See In Re Interest of A.M.H., 1989). Nebraska law affords courts a number of options regarding possible disposition of

234(3)(b) cases, but one option that is not available is commitment to the Youth Development Center at Kearney or Geneva (Neb. Rev. Stat. sec. 43-287). The supreme court noted in In Re Interest of A.M.H. that the statute forbids the treatment of such a child in a Youth Development Center, "which apparently was created for the very purpose of dealing with a subsection (2)(b) juvenile." The court expressed its doubts that the Legislature intended such a result, but did not find it within its province to attempt to interpret what it considered to be the plain and unambiguous language of the statutory provision (p. 620-621).

During recent sessions, the Legislature has tried to address the needs of juveniles by amending various sections of the juvenile code pertaining to "disposition"; the basic theme seems to be to provide for more oversight (See Neb. Rev. Stat. secs. 43-283 to 2,101). But whether or not Nebraska's juvenile justice system is able to respond to criminal acts of increasing frequency and severity committed by young children, especially those under age 16 remains to be seen.

Child Labor Laws

Every state has statutes regulating child labor (Kotin & Aikman, 1980, p. 203), which work in harmony with compulsory attendance laws to keep most children under age 16 in school (p. 223). The primary motive for both child labor and compulsory attendance laws has been the welfare of children; however, a less obvious secondary goal has been to prevent a child labor force from displacing adult workers (Alexander & Jordan, 1973, p. 17).

An excellent summary of the relationship between child labor laws and compulsory attendance laws was provided by the United States Supreme Court in Wisconsin v. Yoder (1972).

> [C]ompulsory education and child labor laws find their historical origin in common humanitarian instincts, and . . . the age limits of both laws have been coordinated to achieve their related objectives . . . The origins of the requirement for school attendance to age 16, an age falling after the completion of elementary school but before completion of high school, are not entirely clear. But to some extent such laws reflected the movement to prohibit most child labor under age 16 that culminated in the provisions of the Federal Fair Labor Standards Act of 1938. It is true, then, that the 16-year child labor age limit may to some degree derive from a contemporary impression that children should be in school until that age. But at the same time, it cannot be denied that, conversely, the 16-year education limit reflects, in substantial measure, the concern that children under that age not be employed under conditions hazardous to their health, or in work that should be performed by adults.
>
> The requirement of compulsory schooling to age 16 must therefore be viewed as aimed not merely at providing educational opportunities for children, but as an alternative to the equally undesirable consequence of unhealthful child labor displacing adult workers, or, on the other hand, forced idleness. The two kinds of statutes--compulsory school attendance and child labor laws--tend to keep children of certain ages off the labor market and in school; this regimen in turn provides opportunity to prepare for a livelihood of a higher order than that which children could pursue without education and protects their health in adolescence (pp. 227-228).

Nebraska's child labor laws, which are found at Neb. Rev. Stat. secs. 48-302 to 48-313, provide generally as follows. No child under 16 years of age may be employed unless the employer procures and keeps on file an employment certificate and keeps on file and posts a list of all such children so employed. The employment certificate is to be issued by an authorized school official, after that person has approved the child's school record and verified the child's age. No child under 16 shall work in circumstances that would put safety, health, or morals at risk. Whoever employs a child under 16 and whoever having under his or her control a child under 16 causes or permits such child to

be employed in violation of the child labor statutes shall be guilty of a Class V misdemeanor.

Exemptions

Each state has some statutory exemptions from the compulsory attendance requirement. Among the more common are: Physical, mental, and emotional disabilities; completion of minimum education; lawful employment; suspension and expulsion; distance from school; discretion of school officials; and religious reasons (Kotin & Aikman, 1980, pp. 169-184).

Nebraska exempts students under the age of 16 from compulsory attendance for these reasons: excused by school authorities (Neb. Rev. Stat. sec. 79-201); graduation from high school (Neb. Rev. Stat., sec. 79-201); necessarily employed for support of himself or those dependent on him, if child is over age 14 and has completed eighth grade (Neb. Rev. Stat. sec 79-202); if illness or severe weather conditions make attendance impossible or impractical (Neb. Rev. Stat. sec. 79-202); and suspension, expulsion, or exclusion from school (Neb. Rev. Stat. sec. 79-4,173). Distance from a public schoolhouse is not an exemption (Neb. Rev. Stat. sec. 79-490(4)).

Alternatives

Many states have enacted statutes that allow certain specified alternatives to attendance at regular public or private schools. Non-accredited church schools and home schools are primary examples.

The Nebraska saga of such alternative schools began with State ex rel. Douglas v. Faith Baptist Church (1981). The State sought to enjoin the operation of the Faith

Baptist Church school because there had been no compliance with the school laws of Nebraska; the defendants claimed inter alia that the school was an extension of their church and that under the Free Exercise Clause of the First Amendment the State had no authority over it. Noting that the State had a compelling interest in carrying out its educational obligations, the supreme court held that the school laws in question were reasonable and thus constitutionally permissible.

Having failed in the courts to free themselves from state regulation, the religious interests aligned with the defendants began to pursue a legislative remedy. Their efforts were successful, and in 1984 the Legislature passed LB 928. The provisions of LB 928 are codified at Neb. Rev. Stat. sec 79-1701; the accompanying agency regulations are found in Nebraska Department of Education Rule 13.

Pursuant to the statutes and regulations, any private, denominational, or parochial school can elect not to meet state accreditation or approval requirements by filing with the Commissioner of Education a sworn statement signed by the parents or guardians of all the children attending the school attesting that the state requirements for approval and accreditation "violate sincerely held religious beliefs' and that a number of other minimal requirements will be met (See Neb. Rev. Stat. sec. 79-1701).

It should be noted that Nebraska has no provision for a "home schooling" alternative not based on religious belief that will satisfy the compulsory attendance laws. Of the six adjoining states, only Kansas has similar legislation (See Kan. Stat. Ann. sec. 72-1111); Colorado, Iowa, Missouri, South Dakota, and Wyoming have provisions for alternative "home schools" that are not grounded in religious belief (See Colo. Rev. Stat.

sec. 22-33-101 to 104-5; Iowa Code Ann. secs. 299A.1 to -A.10; Mo. Ann. Stat. sec 167.031; S.D. Codified Laws Ann. 13-27-2, -3; Wyo. Stat. secs. 21-4-101, -102) Trends in Compulsory Education Law.

The InfoTrac® LegalTrac Database was used to identify law review articles published from 1980 to 1993 on the general topic of compulsory education. This review showed that the most common specific topics pertained to home schools and religious freedom. During recent years there have been numerous efforts around the country to create legal alternatives to attendance at regular schools. A summary review of recent litigation showed that disputes abound over whether or not some home school or religious school satisfies the requirements of some such legislative alternative.

West Publishing Co. began publishing West's Education Law Reporter in January 1982. This publication includes every court decision pertaining to American education that is released for publication by either a state court or federal court. Most of these reported cases are from appellate courts; very few are from trail courts. Nevertheless, these appellate court decisions provide some insight into the kinds of legal questions involved in recent litigation.

Included as part of West's Education Law Reporter system is West's Education Law Digest, an annual publication that compiles headnotes from reported cases in a "key number" format. Key number 160 is entitled "Compulsory attendance." For the period beginning January 1982 and ending December 1993, headnotes from a total of 73 cases were collected under the "compulsory attendance" key number. Although there may be some duplicated counts, the duplications would not be a significant number. The 73

cases can be roughly categorized as follows: 9 religious freedom cases; 34 home school cases; 6 private school cases; and 24 other cases.

One basic trend is clear--about two-thirds of the reported compulsory attendance cases involve efforts to avoid attendance at regular public or private schools, either by arguing religious freedom or through attending alternative kinds of schooling, and nearly half of these cases involve home schooling.

Trends in Age Requirements

Each year the United States Department of Education publishes a Digest of Educational Statistics. To identify age ranges included in compulsory education requirements among the various states and to identify any recent changes in these age ranges selected data from these publications were compiled.

Table 1 shows the age ranges for compulsory school attendance in each of the fifty states and the District of Columbia for four selected years. One trend that occurred from 1978 to 1992 was the lengthening of the span of years during which attendance is required. Fourteen states extended the age span; five states lowered the minimum age, four states raised the maximum age, and five states did both; however, thirty-seven states began and ended this time period with the same age-span requirements.

Table 1
AGES FOR COMPULSORY SCHOOL ATTENDANCE BY STATE FOR SELECTED YEARS

State	1978	1984	1987	1992
Alabama	7-16	7-16	7-16	7-16
Alaska	7-16	7-16	7-16	7-16
Arizona	8-16	8-16	8-16	8-16
Arkansas	7-15	7-17	7-17	5-18
California	6-16	6-16	6-16	6-16
Colorado	7-16	7-16	7-16	7-16
Connecticut	7-16	7-16	7-16	7-16
Delaware	6-16	5-16	5-16	5-16
District of Columbia	7-16	7-17	7-17	7-17
Florida	7-16	6-16	6-16	6-16
Georgia	7-16	7-16	7-16	7-16
Hawaii	6-18	6-18	6-18	6-18
Idaho	7-16	7-16	7-16	7-16
Illinois	7-16	7-16	7-16	7-16
Indiana	7-16	7-16	7-16	7-16
Iowa	7-16	7-16	7-16	7-16
Kansas	7-16	7-16	7-16	7-16
Kentucky	7-16	6-18	6-16	6-16
Louisiana	7-15	7-16	7-16	7-17
Maine	7-17	7-17	7-17	7-17
Maryland	6-16	6-16	6-16	6-16
Massachusetts	6-16	6-16	6-16	6-16
Michigan	6-16	6-16	6-16	6-16
Minnesota	7-16	7-16	7-16	7-16
Mississippi	6-14	6-14	6-14	6-17
Missouri	7-16	7-16	7-16	7-16
Montana	7-16	7-16	7-16	7-16
Nebraska	7-16	7-16	7-16	7-16
Nevada	7-17	7-17	7-17	7-17
New Hampshire	6-16	6-16	6-16	6-16
New Jersey	6-16	6-16	6-16	6-16
New Mexico	8-17	6-18	6-18	6-18
New York	6-16	6-16	6-16	6-16
North Carolina	7-16	7-16	7-16	7-16
North Dakota	7-16	7-16	7-16	7-16
Ohio	6-18	6-18	6-18	6-18
Oklahoma	7-18	7-18	7-18	7-18
Oregon	7-18	7-18	7-18	7-18
Pennsylvania	8-17	8-17	8-17	8-17
Rhode Island	7-16	7-16	7-16	7-16
South Carolina	7-16	5-17	5-17	5-17
South Dakota	7-16	7-16	7-16	7-16
Tennessee	7-16	7-17	7-17	7-17
Texas	7-17	7-16	7-16	7-17
Utah	6-18	6-18	6-18	6-18
Vermont	7-16	7-16	7-16	7-16
Virginia	6-17	5-17	5-17	5-18
Washington	8-18	8-18	8-18	8-18
West Virginia	7-16	6-16	6-16	6-16
Wisconsin	7-16	6-18	6-18	6-18
Wyoming	7-16	7-16	7-16	7-16

Table 2 shows the age ranges used for compulsory school attendance and the number of states by range in 1992. The District of Columbia is included as a state. The most frequently occurring range was ages 7-16, used in nineteen states (including Nebraska); next was ages 6-16, used in eleven states.

Table 2
AGE RANGES FOR COMPULSORY SCHOOL ATTENDANCE:
NUMBER OF STATES BY RANGE IN 1992

Age Range	Number of States
5-16	1
5-17	1
5-18	2
6-16	11
6-17	1
6-18	5
7-16	19
7-17	6
7-18	2
8-16	1
8-17	1
8-18	1

Source: United States Department of Education, Digest of Education Statistics 1993.

Trends in Compulsory Education

Introduction

There has been little study conducted specifically regarding compulsory education. Most of the research and literature that relates to compulsory education concerns three topic areas: truancy, dropouts, and at risk students.

Recent dissertations concerning compulsory education focus on drop outs, at risk students, and attendance. Books in print concern discipline and students who drop out

of school. The primary literature that exists regarding compulsory attendance is found in the ERIC documents.

Data Collection

Information for the remainder of the report was collected through three methods: a literature review, a telephone survey of state departments of education, and interviews with education personnel in a midwestern state. The literature review included ERIC documents, the Reader's Guide to Periodic Literature, Dissertation Abstracts International, Books in Print, and the collection of books and materials available at the University of Nebraska Libraries. A telephone survey was conducted to gather information from each state department of education. Questions asked during the telephone surveys illicited the following information: a description of the state's compulsory attendance laws, information regarding changes in the law in the last five years, and descriptions of unique features of the law.

History of Compulsory Education

Compulsory attendance has a long history in the United States. The Massachusetts School Attendance Act (1852) was the first general compulsory attendance statute in the United States. Legislation in colonial Massachusetts became the model in this country concerning the state's responsibility for the education and training of all children (Illinois State Board of Education, 1983). Eisenberg (1989) reports that 16 compulsory attendance laws were enacted in the 1870s, 22 in the 1880s and 83 in the 1900s. There were 45 laws that were enacted between 1910 and 1915.

Eisenberg (1989) discusses the major beliefs that brought about the development of mandatory attendance laws. There was a belief in the promotion of democracy through civic education. Horace Mann (1830) maintained that there was a connection between education and democracy. Attendance laws developed because of the belief that illiteracy is related to crime. Laws were also a response to immigration: education is a means of assimilation into American culture.

There were opponents to the development of compulsory attendance laws. Some felt that these laws were an infringement on parental rights. Others perceived the laws as intrusion on individual freedoms (Eisenberg, 1989; Illinois State Department of Education, 1983; Miller, 1989).

The industrial age and the post war periods brought more acceptance to compulsory attendance. There was less need for child labor and a greater need for skill development. There was also recognition that literacy led to a more productive society (Eisenberg, 1989; Illinois State Department of Education, 1983; Miller, 1989).

Internationally, during the last third of the nineteenth century, systems of mass schooling were established in most countries of the western world. Between 1869 and 1882 along, schooling was made compulsory in Ontario, British Columbia, and Manitoba in Canada. There was an international acceptance of compulsory schooling as a means of developing competition and creating wealthy nations (Miller, 1989).

Challenges to compulsory attendance are typically from individuals who refuse to send their children to school or individuals who have placed their children in unauthorized educational programs. Unauthorized education is sometimes referred to as

underground education and includes home schooling and unaccredited schools (Lines, 1983).

The development of compulsory attendance and its challenges illustrate several trends for and against compulsory attendance. There is a belief that education promotes a democratic society. History suggests that education is a tool for society, specifically for economic growth. History also demonstrates the need to assimilate as a motive for school attendance.

Opponents to compulsory attendance have two basic premises. First mandatory attendance is an infringement of parental rights and responsibilities. Second, mandatory attendance is an infringement of religious beliefs and convictions.

The Current Status of Compulsory Attendance Laws

Several states have made minor changes relating to compulsory attendance during the last fifty years. These changes have focused on the adjustment of the age of entrance to 5 or 6 years old, thus requiring mandatory kindergarten; as well as the movement of the allowable exit age from 14 to 16 or 18 years of age. A survey was conducted to determine the current status of the compulsory attendance laws throughout the United States. These laws are outlined in Table 3. outlined in Table 1.

The table illustrates a number of trends in compulsory education. First, children are going to school at younger ages. Thirteen states have children in school at age five. Seventeen states require students to be enrolled by age six. Second, there is a movement to change the exit age to 18 or a high school diploma.

Table 3
U.S. Compulsory Attendance Laws*

	Ages of Required Attendance	Changes in the last five years
Alabama	7-16	no
Alaska	7-16	no
Arizona	6-16+	changed to 6 in 1991
Arkansas	5-17+ *parental wavier allowed	many changes focused on entrance age
California	6-18+	no
Colorado	7-16	changed requirements for home schooling
Connecticut	7-16	no
Delaware	5-16	no
District of Columbia	5-18+	yes changed to 18
Florida	5-16	no
Georgia	7-16	no
Hawaii	6-18	no
Idaho	7-16	no
Illinois	6-18+	changed to 18
Indiana	---	---
Iowa	6-16	yes changed from 7 to 6 and 14 to 16.
Kansas	7-16	no
Kentucky	6-16	no
Louisiana	5-17+	changed the entrance age
Maine	7-16 or 9th grade completers	increased 14 to 16
Maryland	5-16+	made kindergarten mandatory
Massachusetts	6-16	no
Michigan	6-16	changed home schooling requirements
Minnesota	7-16 the year 2000 will be 7-18	changed from 16 to 18.
Mississippi	6-17	no
Missouri	---	---
Montana	6-18+	yes mandatory kindergarten
Nebraska	7-16	no
Nevada	7-16+	no
New Hampshire	7-17+	no
New Jersey	6-16	no
New Mexico	5-18+	changed entrance age
New York	6-16	changed entrance age
North Carolina	7-16	no
North Dakota	6-16	no
Oklahoma	5-18	no
Oregon	7-18	no
Pennsylvania	8-17	proposing to go to 6-18
Rhode Island	5-16+	changed entrance age
South Carolina	5-17	no
South Dakota	6-16+	changed entrance and exit age
Tennessee	7-18+	changed exit age
Texas	6-17	no
Utah	7-16+	no
Vermont	7-16	no
Virginia	5-18	changed entrance and exit age
Washington	8-18	no
West Virginia	5-16+	no
Wisconsin	6-18	changed exit age
Wyoming	6-16+	no

*Data based on telephone survey conducted December 1993.
+Ages differ from those reported in Table 1 based on the Digest of Education Statistics

Several states have indicated that changes in compulsory attendance laws are unique to the state. The state of Wisconsin recently moved the attendance requirement from the age of 16 to the age of 18. The legislation also called for a definition of habitual truant. This label was designed for the purposes of the juvenile courts. Wisconsin further called for each district to develop a truancy plan. The state also identified contributing to the truancy of a child as a crime. The Wisconsin legislation addresses the need for a juvenile court system that is effective and responsive in truancy (Henkel, 1988).

The Illinois Department of Education (1983) studied the age at which students may leave school. They examined the rates of attendance across states and noticed that they are very similar. They further noted that there is a noticeable drop in rates of attendance in each of the states at the age at which attendance is no longer required. The state of Illinois has enacted a change in the age of allowable exit from school from 16 to 18 years of age. This change was prompted by the belief that attendance rates will increase when the compulsory attendance age is increased.

The state of California bases its state funding allocation system on average daily attendance. The a.d.a. figure excludes all excused absences. The focus in California is on how to combat truancy or unexcused absences. The California Department of Education (1980) outlined the need for the use of an attendance board. The state requires each school district to develop an attendance plan that uses an attendance board, improves school attendance, and lowers campus crime, vandalism and other

effects of absenteeism. The state of California is often cited as a model for the use of attendance boards.

California, Illinois, and Wisconsin are examples of states that have created unique laws to deal with the needs of their students regarding compulsory attendance. Each state has separate issues and needs. Compulsory attendance laws reflect the needs and desires of the state.

Causes and Effects of Absenteeism

The literature on compulsory attendance causes one to question why students choose not to come to school? What causes students to be truant? Students who are truant are considered at risk (Elliot, 1987). The "at risk" designation encompasses meanings ranging from dropping out to not obtaining meaningful employment throughout life. Being "at risk" is an identifier of truant behavior.

The Chicago Public School System and the Omaha Public School System suggest that the "at risk" population often includes students who are minorities, usually male, and in the junior high age group. These urban school systems see these students getting lost and not reporting to high school. Even though these students are technically truant no one can find them or has identified them to label them truant (Kolasa, 1989; Kyle, 1989).

Where do these kids go and why don't they come to school? Rood (1989) reported the following information from different attendance studies:

- Each school day 2,500,000 students are absent from school.
- On an average Monday, many urban high schools have an absence rate of more that 30 percent.

- It is common for many secondary students to miss 20 to 90 days of school in an academic year.

Studies indicate that nonattenders are usually older or in high school. Absenteeism increases as students progress through high school. Girls will have higher rates of absenteeism than boys in the first three years of high school. Minority students are more likely to be absent. Students with higher grades and/or I.Q.s have better attendance. Students from one-parent families have poorer attendance than students from two-parent families. Those who participate in co-curricular activities will generally be in attendance more often than will non participants (Rood, 1989).

There are four basic reasons why a student may not be in school on any given day: weather and transportation, poor health, family choice, and personal choice. The personal reasons why students choose not to come to school range from inability to maintain social relationships with peers to an attitude by the school staff of "good riddance." Other reasons cited by students for leaving are: lack of home stability, permissive attendance policy, difficulty with classwork, lack of electives or choice in school work, and lack of ownership (Mervilde, 1981; Rood, 1989; Thomas, 1986).

Little and Thompson (1983) suggest that both parents and teachers may be contributing to truant children's unwillingness or inability to consistently attend school. The overvaluing parent (overindulgent and overprotective) was described in recent studies as one who fosters dependence, protects children from the

consequences of their behaviors, and allows children to dominate the household with few pressures to conform to parental standards. Truant children may have learned from overprotective parents that they need to make themselves ill to receive parental attention. Teachers of these children reportedly value these children less than they value the non truant children. The child gets the message that not coming to school is better.

Tyler (1985) calls for reform in education and states that the American compulsion for education is the problem. He notes that compulsory attendance gives no guarantee that all teenagers are capable of mastering a secondary school curriculum. He further argues that compulsory school attendance laws give a disagreeable message that schools are something to be endured until ones 16th or 18th birthday. Thus, school does not stimulate effort.

School absenteeism has been consistently identified by educators as a major concern. Truancy is the major effect of compulsory attendance laws. Truancy and excessive absenteeism influence an entire spectrum, from pupils whose education is affected, to teachers whose instruction is disrupted, to principals who must account for empty desks, to superintendents who must rely on attendance for state aid, to attendance officers, home school counselors and law enforcement officials who must contact parents and locate absent students, to judges who occasionally rule on truancy cases, and to merchants who complain of daytime crime due to truancy (Mervilde, 1981).

Absenteeism is expensive in terms of academic achievement, economic loss to school districts, and teacher efficiency. Most importantly however, truancy is expensive because it is a lost opportunity to rehabilitate a large number of distressed youngsters. Englander (1986) studied one of the most devastating effects of truancy--loss of self esteem. Data from his study clearly demonstrates that truants feel less worthy than non truants. Furthermore, current punitive and coercive measures of most schools and states simply exacerbate the conditions.

Bancky (1985) reports on a pilot program in the Minneapolis area dealing with habitual truants. The program unites social services, school districts, and the court system on a team approach. This approach was found to be effective in eliminating the effects of criminal behavior, and the breakdown of family communication.

The Safe Schools Overview Resource Paper (1986) identifies a relationship in various communities throughout the nation between truancy and daytime delinquency. Short term studies indicate that decreasing truancy will decrease community crime.

The Sweetwater Union High School District in Chula Vista, California sees unauthorized absences as a monetary expense. For each student day of unauthorized student absence, the district loses $11.95. For instance in 1981, there were 95,818 days of unauthorized absence for which the district did not receive any money from the state. This represented a loss to the district of $1,145,125.

The effects of truancy are vast. They include personal, societal, and monetary losses. The causes of truancy include the compulsory attendance laws, student choice, parental and teacher attitudes.

Efforts to Increase School Attendance

School reform movements point to the need for students to stay in school longer. There have been many efforts made to increase school attendance. The efforts can be grouped into three categories. The first category is regulations by state governments. The second category is school attendance programs and efforts. The third category is the development of alternative programming for students who drop out or are identified as "at risk."

There is a national trend to increase the age at which students are allowed to leave school. Many states are considering increasing the age from 16 to 18 years. This increase is based on the assumption that students will stay in school and not be truant. The Illinois (1983) study provides evidence that when the compulsory attendance age increases, attendance rates increase. Further efforts are being made in states like California and Wisconsin to require districts to have plans for dealing with truancy and improving attendance rates.

There have been several efforts by local school districts to increase attendance and decrease truancy. Santa Maria Joint Union High School District (1983) developed a system for "truancy sweeps." On the day of the sweep, assistant principals from each school are on duty at law enforcement agencies. Students are identified, their parents are telephoned and told to come and get

their sons or daughters and return them to school. The law enforcement agencies make a concentrated effort to find students who are truant on these days. The school districts see a decrease in the number of students who are picked up on these sweeps as time goes on.

Dean (1990) describes the use of an attendance board in various locations in Canada as an alternative to sending students to court for truancy. The attendance board provides a team approach to developing a plan for improvement for students. Due to the dissatisfaction with the courts as a vehicle for dealing with truancy, a number of states in the U.S. have legislated alternatives like the attendance board. These states include California, Florida, Illinois, Maine, Maryland, Minnesota, and Wisconsin.

Hassler (1993) studied the use of grade reduction or loss of credit for unexcused absences as her doctoral dissertation. In her study of various attendance policies of school districts, Hassler (1993) found that a policy which removed credit for excessive absenteeism provided an incentive for excellent attendance and increased parental contact.

A typical measure that is often taken by school districts for students who are truant is to suspend the student. Stine (1989) argues that suspension may seem absurd because the student is being dismissed from class for missing class. However, he points out several benefits to suspension. Suspension usually sets up a parent conference and opens up some lines of communication. Parents may feel

that the suspension is a punishment and embarrassment for them and consequently this helps ensure the student's attendance.

Several educators and organizations advocate a more comprehensive approach to improving school attendance (Stine 1990, Duckworth, 1988, Eastwold, 1989). The comprehensive approaches involve personnel, technology, and policy. Most all comprehensive approaches to increasing student attendance call for administrators and support staff to focus on reporting and following up student absences.

The use of technology helps school personnel. Many school districts have computer software programs that monitor school attendance each period. Some districts use automatic dial machines. These machines call parents and notify them immediately if their child is missing from school.

All comprehensive plans involve defined policy as it relates to attendance. Some policies outline incentives as well as disincentives. A comprehensive approach appears to be the most popular and effective among school districts.

Several programs that are considered alternative have been developed as a result of emphasis on increased school attendance age. One such program is Project Return in Portland, Oregon. According to Grice (1986), the primary objective of Project Return is to identify, contact and counsel students who have left school or are failing to attend regularly.

Zafirau (1987) outlines four programs aimed at students who are returning to school. Project DEEP in Witchita, Kansas stands for Diversified Educational

Experiences Program. DEEP gives students a chance to complete a project of their own design in a nontraditional setting and receive academic credit for it.

Project Focus operates in two 1,600 student high schools in Independent School District #623 Roseville, Minnesota. This NDN-funded project provides an alternative program in a "family group" setting. The idea is to encourage "positive youth development" by using peer pressure within a group structure.

Project HOLD originated by the Pajoaro Valley Unified School District has target students assigned to a teacher advocate and a "community counselor".

Higher Horizons is a program providing groups of 100 underachieving secondary school students in Hartford, Connecticut with an integrated program of academic, cultural, and counseling services designed to develop and improve their basic skills in language and mathematics, self-concept, and adjustment to school.

Desnoyers and Pauder (1988) conducted a survey of the methods and programs to increase school attendance in Canada and the United States. They found that when students could return to alternative programming there was more incentive to go to school and remain in school. Alternative programming is a key to successful return of students to school.

Impact of Changes in Compulsory Attendance Laws: One State's Perspective

In 1990 South Dakota enacted legislation that raised the allowable exit age for students from 14 or completion of the eighth grade to 16. To understand the impact of changes in compulsory attendance laws, interviews were conducted with personnel from three different school districts. Interviews were conducted with a

principal of a high school with a population of less than 150; an assistant principal of a high school with a population of 1000; and a social worker for a school district with a population of 17,000.

The interviews focused on three topic areas. The first topic was the differences that they have seen since the implementation of the new compulsory attendance age. The second topic was the positive effects that have resulted since the implementation of the law. The third topic was how they feel about the law and any changes that they would make.

The primary difference that has been observed since the change in the compulsory attendance law is a change in climate. "There are more kids who just come to school with no intention of learning," was one description of how school climate has changed. Other differences were anxieties expressed by teaching staff members regarding training and resources available to meet the needs of the "kids who don't want to be here."

Positive effects that have been recognized since the passage of the new compulsory attendance law include high schools that have become more accommodating. There appear to be fewer kids on the streets. Comments included: "What did we do with these kids before? At least we have some kind of trace of where they are and what they are doing, even if they are failing." Another positive effect has been the realization by teaching staff that all students do not learn in the same way. Schools have to be flexible.

There were several suggestions for changes or support. There was an overwhelming call for alternative educational programs. "Give us some resources, some flexibility so we can develop programs to meet kids needs."

There was a plea for a change of focus. "We shouldn't concern ourselves with how long a child is in school. We need to know what they can do. Who cares when they are in school as long as they master key skills." Children need support systems to help them cope with the many pressures in today's society. Schools can serve as that support structure.

The themes that emerged during the interviews indicate that the change in the compulsory attendance law in South Dakota has provided a challenge. The challenge is to improve education for all students. The effects of the change have highlighted the need for schools to seek alternative programming and to develop support systems and resources. The state, thus far, has not been able to meet the needs expressed by the school districts.

Issues in Compulsory Education

The trend to increase the years of compulsory attendance has drawn attention to some issues. Home schooling and alternative education will be affected by changes in compulsory attendance laws. Homeless or lost kids continue to be overlooked. Resources for school reform and alternative instructional programs need to be identified, developed and funded.

Challenges to the compulsory attendance laws often emanate from disputes between parents and school officials over home instruction. Whenever a

compulsory attendance law changes there is a concern about the impact on home schooling practices (McGee, 1988).

There have been several legislative changes related to home schooling that focus on: legalizing home instruction, permitting home schooling under administrative rules, requiring state and local approval, and developing notification requirements and teacher qualifications (Gordon, 1991). There is a trend towards states modifying their compulsory attendance laws to provide parents with greater control over where they may have their children educated.

Every state must develop a plan for the homeless and the education of the homeless under the McKinney Act. There is little evidence that effective educational programs exist for homeless students (Department of Education, 1990).

There is a cry for educational reform in the United States. One trend in school reform is a focus on increased time spent in school. Increased time spent in school is often a reflection of an increase in the compulsory age of attendance. However, the increase in the compulsory age of attendance has not been reflected in an increase in the resources for schools to deal with a more diverse population.

Policy Recommendations

The current compulsory attendance law should be amended by raising the upper age limit from 16 to 18 or high school graduation; however, the amendment would include a provision that a child who has attained the age of 16 may be excused by school authorities if such child has successfully completed a minimum

competency test that would measure achievement expected of a typical high school graduate.

The test would be developed by the Nebraska Department of Education, but administered at the local level. The test would include, but not necessarily be limited to, the subjects of reading, writing, mathematics, science, and social studies.

The general concept would be to develop and implement something similar to the General Education Development (GED) test for those who do not wish to complete formal high school education.

Students should remain in school until the age of 16. Age 16 is used to classify those subject to the current compulsory education law, to the child labor statutes, and to the juvenile justice code. There would seem to be some rational basis for continuing to classify children on the basis of that age.

The proposed amendment would continue to protect those children under age 16, as before. But those above age 16 would be compelled to remain in school until age 18 or graduation, unless they could demonstrate that they had attained at least the minimum level of education necessary for adult life. For those who would choose to "test out" after age 16, the amendment might serve as a real incentive to learn what is necessary to pass the test.

Some accommodation would have to be made for students with certain kinds of disabilities.

Development and implementation of this "testing out" proposal would not be without difficulty, but it certainly would be feasible. The proposal should reduce the instances of high school "drop outs" who do not have the minimal knowledge necessary to survive in and make a contribution to the adult world.

Nebraska law (Neb. Rev. Stat. sec. 49-1701 and NDE Rule 13) provides for "exempt" schools if parents file a statement objecting to state approval and accreditation requirements on the grounds that those requirements "violate sincerely held religious beliefs" and verifying that certain other minimum state requirements will be met.

It would seem prudent to conduct a policy impact study pertaining to this topic. The issue is sensitive to be sure; however, policy makers ought to know (1) whether or not there is general compliance with the minimal state requirements and (2) whether or not the interests of children are being well-served by the schooling that is being provided.

There is a relationship between education and the juvenile justice system, perhaps the major commonality being a primary concern with the interests of children. Given the changes occurring in society, with increasing frequency and severity of criminal misconduct by children, the juvenile justice system may not be up to the task at hand. And this directly impacts schools and education.

Nebraska policy makers have attended to the juvenile justice code, trying to enhance the likelihood of successful interventions. But perhaps the entire concept of what juvenile codes are trying to accomplish needs to be revisited.

The notion of the errant youth who can be set on the right path has predominated, and rightfully so; however, in too many instances the young person is an experienced, hardened criminal with a total lack of regard for law or legal systems, and that fact needs to be acknowledged.

As noted above, the education system and the juvenile justice system share a common mission--enhancing opportunities for youngsters. But those who work in one system often do not have a sufficient understanding of the other. A joint task force, with representatives from both systems, should be commissioned by the Legislature to explore common issues and interests. Both systems, and ultimately the state's children, would benefit.

TABLE 1 FOOTNOTES

The text of each footnote below was copied verbatim from the appropriate issue of Digest of Education Statistics.

1978

All states: During these years (inclusive) a child must attend school unless some approved basis for exemption exists.

Massachusetts: Lower and upper levels established by the State Board of Education.

Mississippi: Information updated in July 1983. The compulsory attendance regulations are being implemented gradually over a period of several years.

1984

All states: During these years (inclusive) a child must attend school unless some approved basis for exemption exists.

Montana: May leave anytime after completing 8th grade.

South Dakota: May leave anytime after completing 8th grade.

Texas: Must complete academic year in which 16th birthday occurs.

(Note: References to states corrected; errors in original.)

1987

Alaska: Ages 7 to 16 or high school graduation.

Kentucky: Must have parental signature for leaving school between ages of 16 and 18.

Montana: May leave after completion of eighth grade.

New York: The ages are 6 to 17 for New York City and Buffalo.

South Carolina: Permits parental waiver of kindergarten at age 5.

South Dakota: May leave after completion of eighth grade.

Texas: Must complete academic year in which 16th birthday occurs.

Wisconsin: Law specifies ages 6 to 18 unless excused or graduated.

1992

Alaska: Ages 7 to 16 or high school graduation.

Arizona: Ages 8 to 16 or tenth grade completion.

Indiana: Effective 1992-93, students between 16 and 18 are required to submit to an exit interview and have written parental approval before leaving high school.

Kentucky: Must have parental signature for leaving school between ages of 16 and 18.

Minnesota: Will change to 7 to 18 in the year 2000.

Montana: May leave after completion of eighth grade.

New York: Ages 6 to 17 for New York City and Buffalo.

South Carolina: Permits parental waiver of kindergarten at age 5.

South Dakota: May leave after completion of eighth grade.

Texas: Information last updated in 1989.

Virginia: Information last updated in 1990.

Wisconsin: Ages 6 to 18 or high school graduation.

SOURCES: 1978 information--United States Department of Education, Digest of Education Statistics 1983-84; 1984 information--United States Department of Education, Digest of Education Statistics 1985-86; 1987 information--United States Department of Education, Digest of Education Statistics 1988; and 1992 information--United States Department of Education, Digest of Education Statistics 1993.

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